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1722 EYE STREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONE 202 736 8000
FACSIMILE 202 736 8711

FOUNDED 1866

CHICAGO
DALLAS
LOS ANGELES

NEW YORK
LONDON
SINGAPORE
TOKYO

WRITER'S DIRECT NUMBER
(202) 736-8119

WRITER'S E-MAIL ADDRESS
tvanwaze@sidley.com

September 15, 2000

VIA HAND DELIVERY

ORIGINAL

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Room TW-A325
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Ex Parte Presentation
In the Matter of Review of the Commission's Regulations Governing Television Broadcasting, MM Docket No. 91-221

Dear Ms. Salas:

On Thursday, September 14, 2000 Thomas Van Wazer of Sidley & Austin on behalf of Pegasus Communications Corporation ("Pegasus") e-mailed the attached document to the following staff members: David Goodfriend of Commissioner Susan Ness's office; Kathy Brown of Chairman Kennard's office; William Friedman of Commissioner Tristani's office and Helgi Walker of Commissioner Furchtgott-Roth's office. The attached document addresses several of the issues raised in the Petition for Reconsideration filed by Pegasus in the above-referenced proceeding.

Pursuant to section 1.1206 of the Commission's rules, an original and one copy of this letter and attachment are being filed in the above-referenced proceeding. Please direct any questions to the undersigned.

Sincerely yours,

Thomas P. Van Wazer

R. Clark Wadlow
Thomas P. Van Wazer

Enclosure

cc: Kathy Brown
David Goodfriend
William Friedman
Helgi Walker

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Pegasus Communications Corporation ("Pegasus") filed a Petition for Reconsideration of the Report & Order issued in the Local Television Ownership proceeding (MM Docket No, 91-221). That Petition and Pegasus' previous filings in this matter, along with the clear record of Pegasus' (and others') actual LMA operations, demonstrate convincingly that in smaller television markets (unlike the larger markets), duopolies are not merely convenient but are often economically essential if the Commission is seriously interested in furthering diversity and competition from and among over-the-air stations. This economic necessity is especially stark now as many relatively new stations face the prohibitive costs of the coming digital transition. Without appropriate duopolies in these smaller markets, the already present 'digital divide' will be exacerbated: new station start-up will cease and some of the relatively new, standalone television stations will fail. Many of the stations that do survive will be unable to afford the transition to digital television (complicating materially the matter of spectrum recapture) and, as a result, the Commission might be forced to revisit national ownership caps simply to maintain minimal over-the-air programming distribution in these smaller markets.

Pegasus has previously urged the Commission to consider a "bright line" policy in smaller markets permitting duopolies between existing stations provided that the combined market share of the two stations does not exceed the lesser of (i) 40% of the local commercial television revenue in the market or (ii) the market share of the largest station in the market. Short of such a "bright line" policy, Pegasus urges the Commission to at least clarify its small market duopoly waiver criteria.

1. The Commission should not retroactively apply its new standards. The Commission should confirm that the requirement that applicants for duopoly waivers provide an independent verification of efforts to find out-of market buyers does **NOT** apply to stations with Local Marketing Agreements formed before the effective date of the Local Television Ownership Report & Order. Applicants should not be expected to comply with a standard that simply did not exist at the time a business relationship, otherwise entirely consistent with FCC regulations, was entered into.

2. The Commission should presume that a long-unbuilt allocation (or construction permit) that was finally built with the assistance of an LMA relationship was prima facie not economically feasible as a standalone station and, accordingly, presumptively qualifies for an Unbuilt Station waiver.

3. In applying its Unbuilt Station waiver, the Commission should not punish stations for regulatory delay over which the stations have had no control. LMAs entered into prior to August 5, 1999, but which involve stations not fully constructed prior to that date due to regulatory processing delays, should be treated the same as LMAs involving stations that fully constructed prior to that date.

4. The Unbuilt Station waiver should also apply to circumstances in which an applicant has taken the initiative to upgrade a "satellite" station into a viable standalone television station. This creates an incentive for such upgrades that would not otherwise exist and promotes both programming diversity and efficient usage of television spectrum. There is also no public interest benefit to be derived from punishing such initiative.

5. The Commission must establish clear financial guidelines for what constitutes a "failing" station. Specifically, the Commission should make clear that a station's demonstrated inability to fund the build-out of its allocated DTV channel on its own is, by itself, satisfactory evidence hat a station is failing for the purposes of a "Failing Station" waiver. Similarly, the combination of two stations, neither of which can afford production of significant local programming on its own, resulting in the creation of such local programming on at least one of the stations, should be presumptively considered to be entitled to a failing station waiver.